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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,407	02/10/2004	John Kapusta	5001-0441-1	8895

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,407

Applicant(s)

KAPUSTA, JOHN

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1,2,4-11 and 13-20 is/are rejected.
 7) ☒ Claim(s) 3 and 12 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

1. Claims 1-2, 4-5, 7, 9-11, 13-14, 16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliver.

Oliver discloses a firearm comprising:

- a) a slide; 17
- b) a magazine; 14
- c) a magazine follower ; 37
- d) a protruding lip; 37 (far right)
- e) a distal end of the protruding lip extending beyond 37 (see fig. 5)
a plane defined by the outer wall;
- f) a biasing member; 37 (far left)
- g) a slide lever including biasing arm; and 34, 35
- h) a magazine spring. 15

2. Applicant's arguments are addressed as follows. It is argued that Oliver discloses a non-removable magazine. The examiner can find nothing to support this statement. Magazine 14 is removable just as any other element of the constituent firearm structure of Oliver would be as known to one of ordinary skill in this art. Further, the magazine 14 of Oliver is non-rotary (see figs. 2, 5, 6).

3. Claims 1-2, 4-11, and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Savioli.

Savioli discloses a firearm comprising:

- a) a slide; 20
- b) a magazine; 14

Art Unit: 3641

c) a magazine follower ;	56
d) a protruding lip;	56 (upper right)
e) a distal end of the protruding lip extending beyond a plane defined by the outer wall;	56 (see fig. 3)
f) a biasing member;	magazine spring
g) a slide lever including biasing arm;	36, 40, 54
h) a magazine spring;	magazine spring
i) a restraining catch (pivots); and	40
j) a slide recess.	21

4. Applicant's arguments are addressed as follows. It is argued that Savioli lacks "... a distal end of said protruding lip extends beyond a plane defined by an outer wall of said magazine"; "... a distal end of said protruding lip is urged by said biasing member to extend beyond a plane defined by an outer wall of said magazine"; and "... biasing a distal end of said protruding lip to extend beyond a plane defined by an outer wall of the magazine...". In response, please note that outer wall 14 of Savioli has several sides associated with outer wall 14. It has an inner side (contacts cartridges 12 (see fig. 2)); an outer side (contacts receiver 16 (see fig. 2)); and an upper side (adjacent L-shaped cutout 28 in receiver 16 (see fig. 2)). It is the examiner's position that the follower 56 with associated protruding lip extends beyond a plane as defined by the upper surface of the upper side of outer wall 14 (see fig. 3 of Savioli). This follower 56 is biased beyond the plane of the outer wall by the magazine spring of magazine 14.

Applicant makes further arguments that the follower 56 never extends beyond outer wall 14. The follower 56 does extend past outer wall 14. It extends past the upper surface (with

Art Unit: 3641

associated defined plane) of outer wall 14's upper side. It is further argued that Savioli's device never recites an outward bias of the follower. In response, note that the cartridges 12 are moved upwardly to be biased out of the magazine. So too the follower 56 is moved upwardly to be biased out of the magazine and past the upper side of outer wall 14.

It is further argued that the bolt stop is mounted such that a portion is inside the magazine receiver so as to lie in the path of the magazine follower. The examiner concurs with this assessment. However, it has no bearing on the allowability of the claims. Note that it is mounted inside the magazine receiver and not inside the magazine. It is further argued that the Savioli device is "to provide a magazine and slide lever assembly which does not require a portion of the slide lever to protrude into the body of the magazine. In response, note that slide lever assembly 36, 40, 54 does not extend into the body of the magazine (see fig. 3). Further, since this claim language is not claimed it could not be relied upon for allowability.

With regard to the argument that bolt stop portion 40 extends inside the magazine receiver 16 and inside the plane of the outer wall of the magazine. In response, note that the position with regard to the magazine receiver is not at issue as claimed by applicant. Further, the bolt stop portion 40 extends past a plane of the outer wall of the magazine, it just extends past a plane as defined by the upper side of the outer wall of the magazine (see fig. 3).

With regard to the issue of a removable, non-rotary magazine, magazine 14 of Savioli is clearly both (see col. 2, lines 59-61).

5. Claims 1-2, 8, 10-11, 17, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Harvey.

Harvey discloses a firearm comprising:

Art Unit: 3641

a) a slide;	55
b) a magazine;	239
c) a magazine follower ;	271
d) a protruding lip;	273
e) a distal end of the protruding lip extending beyond a plane defined by the outer wall;	273 (see fig. 16)
f) a biasing member;	271 (far right)
g) a follower body; and	271 (bottom)
h) a magazine spring.	272

6. Applicant's arguments are addressed as follows. It is argued that Harvey lacks "... a distal end of said protruding lip extends beyond a plane defined by an outer wall of said magazine"; "... a distal end of said protruding lip is urged by said biasing member to extend beyond a plane defined by an outer wall of said magazine"; and "... biasing a distal end of said protruding lip to extend beyond a plane defined by an outer wall of the magazine...". In response, please note that outer wall of magazine 239 has several sides associated with its outer wall. It has an inner side (contacts cartridges (see fig. 21)); an outer side (contacts magazine receiver (see fig. 3); and an upper side (see fig. 17 (below projecting lug 273)). It is the examiner's position that the follower 271 with associated protruding lip 273 extends beyond a plane as defined by the upper surface of the upper side of the outer wall of magazine 239 (see fig. 17). This follower 273 is biased beyond the plane of the outer wall by the magazine spring 272.

It is further argued that Harvey does not extend beyond a plane defined by an outer wall

Art Unit: 3641

of said magazine. It is further noted that lug 273 is within the plane defined by the outer wall of magazine 239. This is not convincing. The examiner is comparing the lug 273 position relative to the upper side of the outer wall of magazine 239 and its associated plane. It is further argued that lug is only raised upwardly and not outside the plane of the outer wall. In response, when the lug 273 is raised upwardly, it is extended past the upper side of outer wall of the magazine 239 in the same way that the cartridges are moved upwardly and outwardly of the magazine 239. It is further argued that the bolt 55 forcibly holds the lug 273 from extending beyond the outer wall plane. In response, by the time lug 273 has contacted bolt 55, it is already past the upper surface of the outer wall of magazine 239 (see fig. 16).

7. Claims 3 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Applicant's arguments filed on 6/20/2005 have been fully considered but they are not persuasive. These arguments have been addressed in the preceding paragraphs of this Office action.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

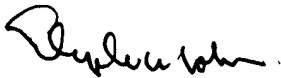
Art Unit: 3641

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
August 22, 2005